

SENATE BILL 604

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2004 Regular Session  
4r1380  
CF 4r1700

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By: **Senators Garagiola, Brochin, Forehand, Giannetti, Haines, Harris,  
Hughes, Jacobs, Jimeno, Klausmeier, and Middleton**

Introduced and read first time: February 6, 2004

Assigned to: Judicial Proceedings

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A BILL ENTITLED

1 AN ACT concerning

2 **Maryland Spam Control Act**

3 FOR the purpose of prohibiting a person from using certain protected computers to  
4 relay or retransmit certain commercial electronic mail messages with the intent  
5 to deceive or mislead recipients or an Internet service provider under certain  
6 circumstances; prohibiting a person from falsifying certain header information  
7 in certain commercial electronic mail messages under certain circumstances;  
8 prohibiting a person from registering for certain electronic mail accounts or  
9 domain names under certain circumstances; prohibiting a person from  
10 conspiring to or falsely representing the right to use certain Internet protocol  
11 addresses under certain circumstances; providing that certain violations of this  
12 Act are felonies; providing for certain penalties and fines for certain violations of  
13 this Act under certain circumstances; authorizing the forfeiture of certain  
14 moneys, income, and property under certain circumstances; authorizing the  
15 Attorney General to institute a civil action under certain circumstances;  
16 providing for a civil penalty; authorizing certain injunctive relief under certain  
17 circumstances; defining certain terms; and generally relating to the Maryland  
18 Spam Control Act.

19 BY adding to  
20 Article - Criminal Law  
21 Section 3-805.1  
22 Annotated Code of Maryland  
23 (2002 Volume and 2003 Supplement)

24 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
25 MARYLAND, That the Laws of Maryland read as follows:

26 **Article - Criminal Law**

27 3-805.1.

28 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS  
29 INDICATED.

1 (2) "COMMERCIAL ELECTRONIC MAIL MESSAGE" MEANS AN  
2 ELECTRONIC MESSAGE SENT PRIMARILY FOR THE PURPOSE OF COMMERCIAL  
3 ADVERTISEMENT OR PROMOTION OF:

4 (I) A COMMERCIAL PRODUCT;

5 (II) A COMMERCIAL SERVICE;

6 (III) THE CONTENT ON AN INTERNET WEBSITE; OR

7 (IV) A WEBSITE OPERATED FOR A COMMERCIAL PURPOSE.

8 (3) "DOMAIN NAME" MEANS ANY ALPHANUMERIC DESIGNATION THAT IS  
9 REGISTERED WITH OR ASSIGNED BY A DOMAIN NAME REGISTRAR, DOMAIN NAME  
10 REGISTRY, OR OTHER DOMAIN NAME REGISTRATION AUTHORITY AS PART OF AN  
11 ELECTRONIC MAIL ADDRESS ON THE INTERNET.

12 (4) "FINANCIAL INSTITUTION" HAS THE SAME MEANING AS PROVIDED IN  
13 § 1-101 OF THE FINANCIAL INSTITUTIONS ARTICLE.

14 (5) "HEADER INFORMATION" MEANS THE SOURCE, DESTINATION, AND  
15 ROUTING INFORMATION ATTACHED TO AN ELECTRONIC MAIL MESSAGE, INCLUDING  
16 THE ORIGINATING DOMAIN NAME AND ORIGINATING ELECTRONIC MAIL ADDRESS,  
17 AND ANY OTHER INFORMATION THAT APPEARS IN THE LINE IDENTIFYING OR  
18 PURPORTING TO IDENTIFY A PERSON INITIATING THE MESSAGE.

19 (6) (I) THE TERM "INITIATE", WHEN USED WITH RESPECT TO A  
20 COMMERCIAL ELECTRONIC MAIL MESSAGE, MEANS TO ORIGINATE OR TRANSMIT  
21 THE MESSAGE OR TO PROCURE THE ORIGATION OR TRANSMISSION OF THE  
22 MESSAGE.

23 (II) THE TERM "INITIATE" DOES NOT INCLUDE THE ACTIONS OF AN  
24 INTERNET SERVICE PROVIDER USED BY ANOTHER PERSON FOR THE TRANSMISSION,  
25 ROUTING, RELAYING, HANDLING, OR STORING, THROUGH AN AUTOMATIC  
26 TECHNICAL PROCESS OF AN ELECTRONIC MAIL MESSAGE FOR WHICH ANOTHER  
27 PERSON HAS PROVIDED AND SELECTED THE RECIPIENT ELECTRONIC MAIL  
28 ADDRESS.

29 (7) "INTERNET" MEANS THE INTERNATIONAL COMPUTER NETWORK OF  
30 BOTH FEDERAL AND NONFEDERAL INTEROPERABLE PACKET SWITCHED DATA  
31 NETWORKS.

32 (8) "INTERNET PROTOCOL ADDRESS" MEANS THE STRING OF NUMBERS  
33 BY WHICH A LOCATION ON THE INTERNET IS IDENTIFIED BY ROUTERS OR OTHER  
34 COMPUTERS CONNECTED TO THE INTERNET.

35 (9) (I) "INTERNET SERVICE PROVIDER" MEANS A SERVICE THAT  
36 ENABLES USERS TO ACCESS CONTENT, INFORMATION, ELECTRONIC MAIL, OR OTHER  
37 SERVICES OFFERED OVER THE INTERNET THAT MAY INCLUDE ACCESS TO

1 PROPRIETARY CONTENT, INFORMATION, AND OTHER SERVICES AS PART OF A  
2 PACKAGE OF SERVICES OFFERED TO SUBSCRIBERS.

3 (II) "INTERNET SERVICE PROVIDER" DOES NOT INCLUDE  
4 TELECOMMUNICATIONS SERVICES.

5 (10) "MULTIPLE" MEANS:

6 (I) MORE THAN 10 COMMERCIAL ELECTRONIC MAIL MESSAGES  
7 DURING A 24-HOUR PERIOD;

8 (II) MORE THAN 100 COMMERCIAL ELECTRONIC MAIL MESSAGES  
9 DURING A 30-DAY PERIOD; OR

10 (III) MORE THAN 1,000 COMMERCIAL ELECTRONIC MAIL MESSAGES  
11 DURING A 1-YEAR PERIOD.

12 (11) "PROTECTED COMPUTER" MEANS A COMPUTER USED:

13 (I) EXCLUSIVELY BY STATE GOVERNMENT OR A FINANCIAL  
14 INSTITUTION; OR

15 (II) BY OR FOR STATE GOVERNMENT OR A FINANCIAL  
16 INSTITUTION; OR

17 (III) IN INTRASTATE OR INTERSTATE COMMUNICATION.

18 (B) A PERSON MAY NOT:

19 (1) USE A PROTECTED COMPUTER TO RELAY OR RETRANSMIT MULTIPLE  
20 COMMERCIAL ELECTRONIC MAIL MESSAGES WITH THE INTENT TO DECEIVE OR  
21 MISLEAD RECIPIENTS OR AN INTERNET SERVICE PROVIDER AS TO THE ORIGIN OF  
22 THE MESSAGE;

23 (2) FALSIFY HEADER INFORMATION IN MULTIPLE COMMERCIAL  
24 ELECTRONIC MAIL MESSAGES AND INTENTIONALLY INITIATE THE TRANSMISSION  
25 OF THE MESSAGES;

26 (3) REGISTER, USING INFORMATION THAT FALSIFIES THE IDENTITY OF  
27 THE ACTUAL REGISTRANT, FOR FIVE OR MORE ELECTRONIC MAIL ACCOUNTS OR  
28 ON-LINE USER ACCOUNTS OR TWO OR MORE DOMAIN NAMES AND INTENTIONALLY  
29 INITIATE THE TRANSMISSION OF MULTIPLE COMMERCIAL ELECTRONIC MAIL  
30 MESSAGES FROM ANY COMBINATION OF ACCOUNTS OR DOMAIN NAMES; OR

31 (4) CONSPIRE TO OR FALSELY REPRESENT THE RIGHT TO USE FIVE OR  
32 MORE INTERNET PROTOCOL ADDRESSES AND INTENTIONALLY INITIATE THE  
33 TRANSMISSION OF MULTIPLE COMMERCIAL ELECTRONIC MAIL MESSAGES FROM  
34 THE INTERNET PROTOCOL ADDRESSES.

1 (C) (1) A PERSON WHO VIOLATES SUBSECTION (B) OF THIS SECTION IS  
2 GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT  
3 EXCEEDING 3 YEARS OR A FINE NOT EXCEEDING \$5,000 OR BOTH;

4 (2) A PERSON WHO VIOLATES SUBSECTION (B) OF THIS SECTION  
5 INVOLVING THE TRANSMISSION OF MORE THAN 250 COMMERCIAL ELECTRONIC MAIL  
6 MESSAGES DURING A 24-HOUR PERIOD, 2,500 COMMERCIAL ELECTRONIC MAIL  
7 MESSAGES DURING ANY 30-DAY PERIOD, OR 25,000 COMMERCIAL ELECTRONIC MAIL  
8 MESSAGES DURING ANY 1-YEAR PERIOD IS GUILTY OF A FELONY AND ON  
9 CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 5 YEARS OR A FINE  
10 NOT EXCEEDING \$10,000 OR BOTH;

11 (3) A PERSON WHO VIOLATES SUBSECTION (B)(3) OF THIS SECTION  
12 INVOLVING 20 OR MORE ELECTRONIC MAIL ACCOUNTS OR 10 OR MORE DOMAIN  
13 NAMES AND INTENTIONALLY INITIATES THE TRANSMISSION OF MULTIPLE  
14 COMMERCIAL ELECTRONIC MAIL MESSAGES FROM THE ACCOUNTS OR USING THE  
15 DOMAIN NAMES IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO  
16 IMPRISONMENT NOT EXCEEDING 5 YEARS OR A FINE NOT EXCEEDING \$10,000 OR  
17 BOTH;

18 (4) A PERSON WHO VIOLATES SUBSECTION (B) OF THIS SECTION THAT  
19 CAUSES A LOSS OF \$500 OR MORE DURING ANY 1-YEAR PERIOD IS GUILTY OF A  
20 FELONY AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 5  
21 YEARS OR A FINE NOT EXCEEDING \$10,000 OR BOTH;

22 (5) A PERSON WHO VIOLATES SUBSECTION (B) OF THIS SECTION IN  
23 CONCERT WITH THREE OR MORE OTHER PERSONS AS THE LEADER OR ORGANIZER  
24 OF THE ACTION THAT CONSTITUTES THE VIOLATION IS GUILTY OF A FELONY AND ON  
25 CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 5 YEARS OR A FINE  
26 NOT EXCEEDING \$10,000 OR BOTH; AND

27 (6) A PERSON WHO VIOLATES SUBSECTION (B) OF THIS SECTION IN  
28 FURTHERANCE OF A FELONY, OR WHO HAS PREVIOUSLY BEEN CONVICTED OF AN  
29 OFFENSE UNDER THE LAWS OF THIS STATE, ANOTHER STATE, OR UNDER ANY  
30 FEDERAL LAW INVOLVING THE TRANSMISSION OF MULTIPLE COMMERCIAL  
31 ELECTRONIC MAIL MESSAGES IS GUILTY OF A FELONY AND ON CONVICTION IS  
32 SUBJECT TO IMPRISONMENT NOT EXCEEDING 10 YEARS OR A FINE NOT EXCEEDING  
33 \$25,000 OR BOTH.

34 (D) IN ADDITION TO ANY OTHER SENTENCE AUTHORIZED BY LAW, THE COURT  
35 MAY DIRECT THAT A PERSON CONVICTED OF A VIOLATION OF THIS SECTION FORFEIT  
36 TO THE STATE:

37 (1) ANY MONEYS AND OTHER INCOME, INCLUDING ALL PROCEEDS  
38 EARNED BUT NOT YET RECEIVED BY A DEFENDANT FROM A THIRD PARTY AS A  
39 RESULT OF THE DEFENDANT'S VIOLATION OF THIS SECTION; AND

40 (2) ALL COMPUTER EQUIPMENT, COMPUTER SOFTWARE, AND  
41 PERSONAL PROPERTY USED IN CONNECTION WITH A VIOLATION OF THIS SECTION  
42 KNOWN BY THE OWNER TO HAVE BEEN USED IN VIOLATION OF THIS SECTION.

1 (E) (1) AN ACTION BROUGHT UNDER THIS SUBSECTION SHALL BE  
2 COMMENCED WITHIN 2 YEARS AFTER THE COMMISSION OF THE ACT.

3 (2) THE ATTORNEY GENERAL MAY INSTITUTE A CIVIL ACTION AGAINST  
4 A PERSON WHO VIOLATES THIS SECTION TO RECOVER FOR THE STATE A CIVIL  
5 PENALTY NOT EXCEEDING:

6 (I) \$25,000 PER DAY OF VIOLATION; OR

7 (II) NOT LESS THAN \$2 NOR MORE THAN \$8 PER COMMERCIAL  
8 ELECTRONIC MAIL MESSAGE INITIATED IN VIOLATION OF THIS SECTION.

9 (3) THE ATTORNEY GENERAL MAY SEEK AN INJUNCTION IN A CIVIL  
10 ACTION TO PROHIBIT A PERSON WHO HAS ENGAGED IN OR IS ENGAGED IN A  
11 VIOLATION OF THIS SECTION FROM ENGAGING IN THE VIOLATION.

12 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
13 October 1, 2004.